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PROBODH PURKAIT

v.

STATE OF WEST BENGAL AND ORS

FEBRUARY 27, 2007

B [B.N. AGRAWAL, P.P. NAOLEKAR AND ALTAMAS KABIR, JJ.]

*Criminal Trial.*

C *Appreciation of evidence—Unlawful assembly—Death of two persons on account of assault by members of unlawful assembly—Some members of unlawful assembly convicted—Conviction challenged—Prosecution witnesses identifying convicted members of unlawful assembly—Prosecution witnesses found reliable and corroborating each other—Some of the prosecution witnesses related to one of the accused persons—No reason for implicating accused persons falsely—Conviction upheld—Indian Penal Code, 1860—Sections 148 and 302/149.*

D The case of the prosecution was that about 400-500 persons formed an unlawful assembly armed with deadly weapons such as lathi tangi, ballam, etc. under the leadership of P and attacked and looted house of PW-3 and E assaulted members of his family. The mob not finding R there but on coming to know that he had gone to house of PW-7, proceeded to the house of PW-7 and some members of the unlawful assembly entered into the house and dragged out R and his son M along with PW-7 and his son PW-6. The members of the unlawful assembly assaulted R and his son M with lathi, tangi, ballam, etc. resulting in their death on the spot and also assaulted PW-7, his son PW-6, and S and looted their household articles. Out of 39 persons who faced trial the trial Court convicted six persons under Sections 148, 302/149 and 323/149 of Indian Penal Code, 1860 and acquitted other 33 accused including P. The six convicted persons, and the State against acquittal of 33 accused persons, filed appeal in the High Court. Division Bench confirmed F the conviction of six accused persons already convicted by Trial Court and also partly allowed appeal filed by State by convicting P and four other accused persons under Sections 148 and 302/149 IPC. The six accused persons initially convicted by Trial Court, four accused persons convicted by High G Court along with P and the State against acquittal of remaining accused have

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preferred these appeals.

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Appellant-accused persons *inter alia* contended that the High Court erred in relying on the unreliable evidence of PWs 3,5,6,7,8 and 9 which had been discarded by the Trial Court; that there were serious discrepancies in the version of the different prosecution witnesses which discredited the entire prosecution case; and that the entire incident was the result of political rivalry in which the accused persons had been falsely implicated.

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Dismissing the appeals, the Court

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**HELD:** 1. The evidence of PWs 6 and 7, which has been relied upon by the Sessions Judge and the High Court establishes that an unlawful mob assembled at the house of PW-7 and some of the members of the unlawful assembly, who were identified, entered into the house and dragged out R and M. PWs. 2,3,5,8 and 9 corroborate the evidence of PWs 6 and 7. This Court is unable to accept the reasoning of the Sessions Judge in disbelieving the evidence of PW-2. His evidence has been discarded on the ground that he had named as many as 157 persons to be part of the unlawful assembly which assembled in front of the house of PW-7. According to the Sessions Judge it was impossible for him to have remembered the names of so many persons present. The Session Judge also doubted his testimony on the ground that the mob would not have allowed him to witness the incident and leave him untouched so that he could be an eye witness against them. Similarly, the evidence of PWs 3,4, and 5 have been discarded by the Sessions Judge for reasons which are difficult to sustain. [Paras 32 and 33] [362-H-C]

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2. PWs 6 and 7 have deposed as to how they were taken by the members of the unlawful assembly, along with M, to where P was standing and on the instructions of P who told them to act according to plan, the said persons, who were identified by Pws 5, 6 and 7, murdered M. The entreaties of PW 7, who was related to P, also went to vain and he was assaulted on the head by K with a lathi. The evidence of PWs 6 and 7 establishes the presence of P and the other convicted persons at the place of occurrence and their involvement in the murder of M and assault on PWs 6 and 7 and they have been rightly convicted. Even one of the accused person convicted by the Trial Court who had not been initially named by PWs 6 and 7, has been named by PW-5 as being part of the unlawful assembly outside her father-in-law's (PW-7's) house. Significantly, she is P's niece and had no reason to implicate and the other falsely. [Paras 34 and 35] [363-D-F]

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1077 of 2005.

Form the final Judgment and Order dated 20.7.2005 of the High Court of Calcutta at Calcutta in G.A. No. 17/1999.

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Crl. A. Nos. 30, 13 and 438/2006.

Sushil Kumar, Ranjit Kumar, Altaf Ahmad, Sanjiv Sen, Jaymalya Bagchi, Partha Sil, Sanjeev Saxena, Ghanshyam Joshi, Aditya Kumar, Rauf Rahim, Tara C Chandra Sharma, Neelam Sharma, H.K. Puri, Ujjwal Banerjee, S.K. Puri, Priya Puri, V.M. Chauhan for the appearing parties.

The Judgment of the Court was delivered by

D **ALTAMAS KABIR, J.** 1. All these four appeals arise out of the judgment dated 20th July, 2005 passed by the Division Bench of the Calcutta High Court in respect of the judgment delivered by the Additional Sessions Judge, Alipore, 24 Parganas (South), in Sessions Trial No. 3(5) of 1993.

E 2. The said trial involves a double murder committed at Radhaballavpur under Kultali Police Station on 15th January, 1985. In all 109 persons were shown as accused in the charge-sheet in connection with Kultali P.S. case 4(1) of 1985 dated 16th January, 1985. Out of the said 109 accused, 98 were committed to the Sessions Court. Out of the said 98 accused, 58 stood acquitted under Section 232 Cr.P.C. and one Yunus Laskar could not be tried as he was found to be insane. Ultimately, 39 persons faced the trial before F the Additional Session Judge-cum-Judge, Special Court (EC Act) Alipore, 24 Parganas (South).

G 3. The prosecution case is that one Shah Alam Molla (PW-2) lodged a written complaint at Kultali Police Station, South 24 Parganas, at about 1730 hours. on 16th January, 1985, stating that on 15th January, 1985 at about 8 a.m. about 157 persons, as named in the complaint, along with 400 to 500 persons formed an unlawful assembly armed with deadly weapons such as lathi, tangi, ballam etc. under the leadership of one Probodh Purkait and proceeded towards Radhaballavpur. First they attacked the house of one Payed Ali Laskar (PW-3). The members of the unlawful assembly looted the house of Payed Ali, assaulted the members of his family and also committed H

rape on his sister. A

4. It was further alleged that the mob failed to find Abdur Rahaman Laskar in Payed Ali Laskar's house but on coming to know that he had gone to the house of one Dr. Srinibas Roy (PW-7), the members of the unlawful assembly under the leadership of Prabodh Purkait and others proceeded to the house of Dr. Srinibas Roy. On reaching there, some of the members of the unlawful assembly entered into the house of Dr. Srinibas Roy and dragged out Abdul Rahaman Laskar and also Abdur Molla along with Dr. Srinibas Roy and his son Aurobinda Roy (PW-6). The members of the unlawful assembly then assaulted Abdur Rahaman Laskar and Abdur Molla with lathi, tangi, ballam etc. resulting in their death on the spot. The members of the unlawful assembly also assaulted Dr. Srinibas Roy and his son Aurobinda and one Sudarshan and looted their household articles. B

5. It was also disclosed that the incident was a sequel to an incident which had taken place on 14th January, 1985, when there was a quarrel between the members of the Congress Party and the Socialist Unity Centre of India over the snatching of a microphone by Abdur Rahaman Laskar and consequently, Probodh Purkait and other leaders of the S.U.C.I. party engineered the assault and murder of Abdur Rahaman Laskar and Abdur Molla. C

6. By his judgment dated 12th November, 1997, the Sessions Judge convicted Yusuf Gayen, Ismail Laskar, Srikanta Halder, Kartick Naskar, Khudiram Naskar and Kauser Baidya under Sections 148, 302/149, 323/149 Indian Penal Code and sentenced them to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/- each, in default, to suffer rigorous imprisonment for one year under Section 148 Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.100/-, in default, to suffer rigorous imprisonment for one year each under Section 302/149 Indian Penal Code and also to suffer rigorous imprisonment for six months each and to pay a fine of Rs.5000/-, in default, to suffer rigorous imprisonment for three months each under Section 323/149 Indian Penal Code. The trial court acquitted the other 33 accused, including Probodh Purkait, the appellant in Criminal Appeal No. 1077 of 2005. D

7. While the convicted persons preferred Criminal Appeal 4 of 1998 before the Calcutta High Court, the State filed an appeal, being No. 17 of 1999, against the order of acquittal made in respect of the other 33 accused. E

8. The Division Bench of the Calcutta High Court while confirming the H

A conviction and sentence of Yusuf Gayen and the other five accused convicted by the Sessions Judge, allowed the Government's appeal in part by convicting Probodh Purkait, Harisadhan Mali, Iran Molla, Anirudha Haldar and Basinath Gayen under section 148 IPC and Section 302/149 IPC and sentenced them to suffer rigorous imprisonment for life under Section 302/149 IPC and to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for three months each. No separate sentence was awarded to the convicted persons under Section 148 Indian Penal Code. The order of acquittal as far as the remaining accused are concerned, was not interfered with.

9. Criminal Appeal No. 1077 of 2005 in this Court has been filed by C Probodh Purkait against his conviction by the Calcutta High Court. Criminal Appeal No.13 of 2006 has been filed by the six accused persons who were initially convicted by the Sessions Court. Criminal Appeal No. 30 of 2006 has been filed by four of the five accused who were convicted by the Calcutta High Court along with Probodh Purkait. Criminal Appeal No. 438 of 2006 has been filed by the State of West Bengal against the acquittal of the remaining D accused.

10. Mr. Sushil Kumar, learned senior counsel appearing for Probodh Purkait and the other four accused, whose acquittal was reversed by the Calcutta High Court, submitted that the judgment of the Calcutta High Court as far as the said five appellants are concerned, is not supported by the E evidence adduced by the prosecution. He pointed out that on a careful appraisal of the evidence of PWs 1 to 9, the Sessions Judge had discarded the evidence of PW 2, Shah Alam Molla, who had lodged the First Information Report. It was urged that the Sessions Judge had very rightly pointed out that there was no explanation for the delay of 33 hours in lodging the First F Information Report and the explanation given for the same was weak and feeble. The Sessions Judge also observed that PW2 was a chance witness who according to the prosecution had come to Radhaballavpur to buy sweets and subsequently is alleged to have followed the prosecution from the Madrasa School to the house of Payed Laskar. The Sessions Judge also disbelieved the evidence of Kartick Mondal PW1 as his evidence was at material points G contrary to the prosecution case.

11. Likewise, the Sessions Judge also discarded the evidence of PWs 3 and 4, Payed Laskar and Kalipada Mondal, as being unconvincing. Regarding the evidence of PW 3 as to the involvement of Probodh Purkait in damaging his house and looting the household articles, the Sessions Judge has observed H

that there is no iota of evidence. Referring to certain discrepancies in the evidence of PW 3 regarding the assault on the deceased- Abdur Rahaman Laskar and Abdur Molla, and the place where they were said to have been killed, the evidence of PW-3 was disbelieved by the Court on the basis of spot inspection made by the Sessions Judge. Mr. Sushil Kumar, pointed out that the evidence of PW-4, Kalipada Mondal, was also discarded for the same reason.

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12. Mr. Sushil Kumar submitted that the Sessions Judge did not also place reliance on the evidence of PW-8, Sudarshan Roy, who is alleged to be an injured eye-witness, as he did not get himself examined by a doctor.

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13. The evidence of PW-9, Md. Sahabuddin Molla, was also not accepted as regards the looting of Payed Laskar's house. His testimony as an eye-witness to the murder of Abdur Rahman Laskar and Abdur Molla was contradicted by the Investigating Officer and was also disbelieved.

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14. Dealing with the evidence of PW-5, Kalpana Roy, her son PW-6, Aurobinda Roy and her husband, PW-7, Srinibas Roy who were all said to be eye-witnesses to the incident in their house and later on in the field to the south of their house, the Sessions Judge found certain discrepancies in the evidence of PW-5 and her statement before the Investigating Officer as to the manner in which the incident is alleged to have occurred in her house. On such basis, the Sessions Judge found her evidence to be discredited, leaving only the evidence of PWs 6 and 7 to prove the prosecution case that the deceased were dragged out of the house of PW-7 by the accused at the instant of Probodh Purkait and thereafter murdered.

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15. Mr. Sushil Kumar submitted that the Sessions Judge had accepted the evidence of PWs 6 and 7 regarding the assault on PW-7 by accused, Kauser Baidya with a lathi and the fact that PWs 6 and 7 had an opportunity of seeing the assailants of Abdur Molla when he was dragged to the field, since he had also been brought there. The trial court found that the evidence of PWs 6 and 7 to be mutually corroborative. However, their evidence regarding the involvement of Probodh Purkait, Basinath and Basudeb in the murder of Abdur Molla and assault on them was not believed.

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16. Mr. Sushil Kumar submitted that on the basis of the evidence of PWs 6 and 7 and the medical evidence, the Sessions Judge came to the conclusion that accused Yusuf Gayen, Srikanti Halder, Kartick Nasker, Ismail Lasker and Khudiram Nasker and others had trespassed into the house of

A Srinibas Roy (PW-7) on 15th January, 1985, at about 8/8.30 a.m. at Radhaballavpur and that they along with Kauser Baidya assaulted Abdur Molla, Srinibas and Aurobinda by lathi in the field to the south of the house of Srinibas and caused simple injuries to Srinibas and Aurobinda and murdered Abdur Molla at Chowdhury Chak near Sardarpura Road at Radhaballavpur, P.S. Kultali.

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17. The further finding was that Abdur Rahaman Laskar was also murdered at that place on that date, but his assailants are not known.

C 18. The Sessions Judge accordingly convicted Yusuf Gayen and the five others accused under Sections 148, 302/149,323/149 Indian Penal Code and sentenced them in the manner indicated hereinbefore and acquitted all the other accused, including Probodh Purkait, Hari Sadhan Mali, Iran Molla, Anirudha Haldar and Basinath Gayen who were subsequently convicted by the High Court under Section 148 and 302/149 Indian Penal Code.

D 19. Mr. Sushil Kumar submitted that in appeal, the High Court on a re-appraisal of the evidence accepted the evidence of PWs 3,5,6,7,8, and 9 and observed that all the said witnesses had seen the occurrence from different angles and different places. The High Court also held that since all the prosecution witnesses had mentioned that Probodh Purkait was a member of the unlawful assembly and, in fact, led the unlawful assembly, he could not be absolved of the complicity of sharing the common object of the unlawful assembly though there was no evidence to indicate that Probodh Purkait had himself inflicted any injury.

E F 20. On the basis of the above the High Court also convicted Probodh Purkait, Hari Sadhan Mali, Iran Molla, Anirudha Haldar and Basinath Gayen under Sections 148, 302/149 Indian Penal Code and sentenced them to suffer rigorous imprisonment for life under Sections 302/149 and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months each.

G 21. Mr. Sushil Kumar urged that the High Court had erred in relying on the unreliable evidence of PWs 3, 5, 8 and 9, which had been discarded by the Sessions Judge for good reasons. Mr. Kumar submitted that the High Court had not even considered the evidence of PW-2, Shah Alam Molla, who lodged the First Information Report about 33 hours after the incident.

H 22. Mr. Kumar submitted that on the state of the evidence the involvement

of Probodh Purkait was not established. It was urged that from the evidence A it would be clear that the place where Probodh Purkait was alleged to have been standing had not been definitely fixed, and, on the other hand, even from the evidence of PWs 6 and 7 it would appear that Probodh Purkait was standing at a distance of 2 kilometres from the house of PW-7 across a field.

23. Mr. Sushil Kumar submitted that the High Court had committed a grave error of judgment in convicting Probodh Purkait, Hari Sadhan Mali, Iran Molla, Anirudha Haldar and Basinath Gayen under Sections 148, 302/149 on the basis of the evidence of PWs 3, 5, 6, 7, 8 and 9 and such conviction and sentence was liable to be set aside. B

24. Mr. Ranjit Kumar, senior counsel for the appellants Yusuf Gayen, Ismail Naskar, Srikanta Haldar, Kartick Naskar, Khudiram Naskar and Kauser Baidya, who had been initially convicted by the Sessions Judge, repeated Mr. Sushil Kumar's submissions that on a painstaking appraisal of the evidence led by the prosecution the Sessions Judge had for good reasons given by him discarded the evidence of PWs 1, 2, 3, 4, 5, 8 and 9. Once the evidence of PW-2, who had lodged the First Information Report, was disbelieved, the main pillar of the prosecution case stood demolished. C D

25. Mr. Ranjit Kumar submitted that there were serious discrepancies in the version of the different prosecution witnesses which discredited the entire prosecution story and made the same highly improbable. Mr. Ranjit Kumar contended that the injuries on the body of Abdur Molla clearly belied the prosecution evidence that he had been dragged from the house of Dr. Srinibas Roy (PW-7) to the field to the south of the house for a distance of about two kilometers where Probodh Purkait was alleged to be standing. He also emphasized the fact that the body of the other deceased, Abdur Rahaman Laskar, was found at some distance from the body of Abdur Molla, which again falsified the prosecution case that the deceased had been dragged from the house of Dr. Srinibas Roy and killed by the members of the unlawful assembly before Probodh Purkait. E F

26. Mr. Ranjit Kumar submitted that one of the appellants, Khudiram Naskar, had not been identified by PWs 6 and 7 as having been a member of the unlawful assembly which attacked the house of PW-7 and dragged out PWs 6 and 7 therefrom. G

27. Mr. Ranjit Kumar submitted that the entire incident was the result H

A of political rivalry between the supporters of the Congress Party and those of the S.U.C.I. and Probodh Purkait as the elected Member of the Legislative Assembly of the S.U.C.I. party and his supporters had been falsely implicated in the case. Mr. Kumar submitted that the same would also be evident from the fact that despite the evidence on record no one was convicted for the murder of Abdur Rahaman Laskar.

B 28. Appearing for the State, Mr. Altaf Ahmed submitted that the Sessions Judge had erroneously discarded the evidence of PWs 2, 3, 4, 5, 8 and 9 and that the reasons given in doing so were not acceptable. It was submitted that the evidence of the prosecution witnesses was consistent as to the incident C and the manner in which it had occurred. A few discrepancies with regard to the identification of the assailants and whether the murders were committed near the house of Srinibas Roy or some distance away could not detract from the veracity of the evidence as a whole.

D 29. Mr. Ahmed submitted that all the witnesses had described the incident involving the attack on the house of Dr. Srinibas Roy by the unlawful assembly and the role played by some of the members of the unlawful assembly in entering the house of Dr. Srinibas Roy and dragging out Abdur Rahaman Laskar and Abdur Molla therefrom and thereafter assaulting them with lathis, tangis, ballams etc. The said witnesses also described the role of E Probodh Purkait in leading the unlawful assembly to the house of Payed Ali and then Dr. Srinibas Roy.

F 30. Mr. Ahmed submitted that by erroneously discarding the evidence of PWs 2, 3, 4, 5, 8 and 9, the Sessions Judge had erred in convicting only six of the thirty nine accused and acquitting the others. Relying on the evidence of the aforesaid prosecution witnesses, as also PWs 6 and 7, the High Court rightly confirmed the conviction of the said six accused and convicted Probodh Purkait and four others also under Sections 148 and 302/149 Indian Penal Code and no interference was called for in respect thereof.

G 31. We have carefully considered the submissions made on behalf of the appellants in the first three appeals and those made on behalf of the State and we find ourselves unable to differ with the decision of the High Court.

H 32. The evidence of PWs 6 and 7, which has been relied upon by the Sessions Judge and the High Court establishes that an unlawful mob assembled at the house of Dr. Srinibas Roy and some of the members of the unlawful

assembly, who were identified, entered into the house and dragged out Abdur Rahaman Laskar and Abdur Molla. PWs 2,3,5, 8 and 9 corroborate the evidence of PWs 6 and 7. We are unable to accept the reasoning of the Sessions Judge in disbelieving the evidence of PW-2. His evidence has been discarded on the ground that he had named as many as 157 persons to be part of the unlawful assembly which assembled in front of the house of PW-7. According to the Sessions Judge it was impossible for him to have remembered the names of so many persons present. The Sessions Judge also doubted his testimony on the ground that the mob would not have allowed him to witness the incident and leave him untouched so that he could be an eye-witness against them.

33. Similarly, the evidence of PWs 3,4, and 5 have been discarded by the Sessions Judge for reasons which are difficult to sustain.

34. PWs 6 and 7 have deposed as to how they were taken by the members of the unlawful assembly, along with Abdur Molla, to where Probodh Purkait was standing and on the instructions of Probodh Purkait who told them to act according to plan (*Je Katha shei kaaj*) the said persons, who were identified by PWs 5, 6 and 7, murdered Abdur Molla. The entreaties of PW 7, who was related to Probodh Purkait, also went in vain and he was assaulted on the head by Kauser Baidya with a lathi.

35. The evidence of PWs 6 and 7 establishes the presence of Probodh Purkait and the other convicted persons at the place of occurrence and their involvement in the murder of Abdur Molla and assault on PWs 6 and 7 and they have been rightly convicted. Even Khudiram Naskar who according to Mr. Ranjit Kumar had not been initially named by PWs 6 and 7, has been named by PW-5 as being part of the unlawful assembly outside her father-in-law's house. Significantly, she is Probodh Purkait's niece and had no reason to implicate him and the others falsely.

36. The appeals filed by Probodh Purkait (Crl. Appeal No.1077 of 2005), Basinath Gayen and three others (Crl. Appeal No.30 of 2006) and Yusuf Gayen and five others (Crl. Appeal No.13 of 2006) therefore fail and are accordingly dismissed. Crl. Appeal No.438 of 2006 filed by the State of West Bengal is also dismissed and the order of acquittal both by the Sessions Judge and the High Court as far as Bansari Gayen and the 27 other accused are concerned, is confirmed.